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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 386 (JGK0

5 CORY HARRIS, DANIEL HERRING,
6 JARON LANGHORNE, MITCHELL
7 MALDONADO, UNIQUE NEWELL,
ANDREW ROBLES, MIGUEL ROBLES
and LUIS ZABALA,

8 Defendants.

9 -----x

10 July 7, 2015
11 4:30 p.m.

12 Before:

13 HON. JOHN G. KOELTL,

14 District Judge
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APPEARANCES

PREET BHARARA

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Southern District of New York

BY: MICHAEL GERBER

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MARK S. DeMARCO

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BY: JOANNA C. HENDON

ALICIA K. AMDUR

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(Case called)

THE DEPUTY CLERK: All parties please state who they are for the record, and defense counsel please indicate whether your client is present.

MS. WAXMAN: Good afternoon, your Honor. Hadassa Waxman and Michael Gerber for the United States.

MR. GERBER: Good afternoon, your Honor.

MS. WAXMAN: Good afternoon, your Honor. Bobbi C. Sternheim for Cory Harris. Cory -- raise your hand -- is seated first row. Thank you.

THE COURT: Okay. Thank you.

MR. SOLOWAY: Good afternoon, your Honor. I am Robert Soloway for Daniel Herring. He is seated in the jury box first row, third from the left, your Honor, and third from the right.

THE COURT: Thank you. Great.

MR. KIRTON: Marlon Kirton for Jaron Langhorne seated in the first row, fourth seat. Mr. Langhorne? Good afternoon, your Honor.

THE COURT: Good afternoon, thank you.

MS. HENDON: Good afternoon, your Honor. Joanna Hendon and Alicia Amdur for Mr. Zabala. Mr. Zabala just stood up, he is in the second row in the jury box.

THE COURT: Thank you.

MR. COHEN: Good afternoon, your Honor. Irving Cohen appearing for Mitchell Maldonado. He is the first person in

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1 the box.

2 THE COURT: Okay. Thank you.

3 MR. YANNELLA: Good afternoon. Daniel Yannella for
4 Unique Newell who is in the second row raising his hand.

5 THE COURT: Thank you.

6 MR. SEARS: Good afternoon, your Honor. Eric Sears
7 for Miguel Robles who is standing up in the third row in the
8 audience.

9 THE COURT: Okay. Thank you.

10 MR. DEMARCO: And Mark DeMarco for Andrew Robles who
11 is in the jury box, your Honor.

12 THE COURT: Thank you.

13 Ms. Waxman?

14 MS. WAXMAN: Thank you, your Honor.

15 As the Court is aware, the indictment charges 12
16 defendants, eight of whom are present in court before your
17 Honor. There are four outstanding defendants, three of whom
18 are incarcerated in Vermont, and the marshals are in the
19 process of transferring them over to the Southern District,
20 specifically Frank Jenkins is charged in the District of
21 Vermont. We submitted a writ and the marshals are coordinating
22 with marshals in Vermont to have him transferred here. Raheem
23 Maldonado, we understand from the marshals, that he should be
24 in this district at some point next week. And Krystal
25 Pinnstoneault and the marshals are trying to coordinate her

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1 arrival in the district as well. In addition, Adam Phillips,
2 who was arrested in the Eastern District of Pennsylvania and is
3 incarcerated there, will be brought to the district hopefully
4 next week.

5 Your Honor, the government has begun to produce
6 discovery --

7 THE COURT: Can I just stop you for a moment?

8 MS. WAXMAN: Sure.

9 THE COURT: With respect to the eight defendants in
10 court, were they arraigned before the magistrate?

11 MS. WAXMAN: Yes, they were all arraigned before the
12 magistrate, your Honor.

13 THE COURT: And warned of their rights?

14 MS. WAXMAN: Each of them was so warned, your Honor.

15 THE COURT: What is the state of the speedy trial
16 clock with respect to those eight?

17 MS. WAXMAN: So, your Honor, the speedy trial clock,
18 there is a difference among the eight and I can review that
19 with your Honor.

20 Your Honor, most of these defendants were presented
21 before Judge Freeman. She explicitly excluded time with
22 respect to a number of the defendants; Daniel Herring,
23 Mr. Newell, Mr. Robles -- Miguel Robles and his brother Andrew
24 Robles. Judge Freeman declined to exclude time with respect to
25 Mr. Harris, Mr. Mitchell Maldonado and Mr. Luis Zabala.

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1 It is the government's view, of course, that exclusion
2 as to one of the defendants is exclusion as to all, so it is
3 the government's view that we have lost no time on the speedy
4 trial clock.

5 THE COURT: No time.

6 MS. WAXMAN: Yes. Correct.

7 THE COURT: I interrupted you. Go ahead.

8 MS. WAXMAN: Your Honor, I was just going to
9 summarize, if your Honor would like to hear the status of
10 discovery.

11 THE COURT: Yes.

12 MS. WAXMAN: The government made its first production
13 on Friday, July 2nd, 2015, and we have confirmed with the
14 defendants that they have received that production. That
15 production has included a number of undercover buys of crack
16 cocaine and heroin that were directed and supervised by law
17 enforcement in Vermont. There are buy reports, reports written
18 by a law enforcement agent up in Vermont. In addition, some of
19 those buys were recorded through audio and video. There were
20 photographs of the evidence in connection with those buys and
21 that has all been produced to the defendants.

22 In addition, the government has produced documents
23 from Western Union and MoneyGram which show money transfers
24 from some of the defendants in Vermont to recipients here in
25 New York City.

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1 In addition, your Honor, the government seized a
2 number of phones in connection with the investigation. We have
3 downloaded the data from those phones and we have produced that
4 which includes contact lists, call logs, text messages and so
5 forth. So that was produced as of Thursday of last week.

6 Today the government handed the defendants its second
7 production which includes search warrant applications and
8 related warrants and orders on four locations that were
9 searched in connection with the takedown. We have also
10 produced GPS applications and the related warrants and orders
11 for cellular telephones that were used by many of the
12 defendants.

13 The government will continue to produce discovery on a
14 rolling basis.

15 As we have discussed with some of the counsel prior to
16 your Honor taking the bench, what remains outstanding are what
17 we call individual discovery which includes the criminal
18 histories for each of the defendants, the marshal intake form
19 for each of the defendants, and recorded post-arrest statements
20 to the extent that any of the defendants made them. In
21 addition, we still have to produce the search warrant returns
22 so photographs of the evidence seized during the execution of
23 the four search warrants.

24 In addition, the government, as I just noted, had GPS
25 orders on many of the defendants' cell phones. We still need

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1 to produce the data obtained from those GPS orders.

2 There is material from Facebook which we will produce
3 and there is also several NYPD reports that need to be
4 produced.

5 In addition, the government will make available, at
6 the defense request, any of the physical evidence and the
7 defense would be able to inspect that evidence at their
8 convenience.

9 THE COURT: When do you expect to complete discovery?

10 MS. WAXMAN: Your Honor, I would think in the next
11 three to four weeks discovery will be completed.

12 THE COURT: Okay. All right. I am perfectly happy to
13 listen to anything that any defense counsel wants to tell me.
14 I would normally set the case down for another conference a
15 reasonable period of time after the government has completed
16 discovery. The government says they would complete discovery
17 by approximately the first week in August which means that I
18 would set it down for another conference sometime in about the
19 second week in September or so -- if that's amenable to
20 defense.

21 MR. DEMARCO: Judge, are you talking about the week of
22 September 14th? Or the previous week.

23 THE COURT: Whatever would be --

24 MR. DEMARCO: There are some holidays but they don't
25 affect me, they affect Mr. Yannella.

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1 MS. STERNHEIM: Your Honor, would it be possible to do
2 it mid or later in the week of the 14th?

3 THE COURT: Sure.

4 Mr. Fletcher?

5 MR. COHEN: 16th, 17th. No good.

6 MS. STERNHEIM: 16th, 17th, 18th.

7 THE COURT: How about September the 16th at 4:30 p.m.

8 MS. WAXMAN: Yes, your Honor. That's fine. Thank you
9 very much.

10 MR. KIRTON: That's fine.

11 MS. STERNHEIM: Thank you.

12 THE COURT: That's not a holiday.

13 MS. STERNHEIM: That's not a holiday that day.

14 THE COURT: Okay.

15 MR. KIRTON: Your Honor, I did want to raise one
16 issue.

17 I was actually appointed to this case by the
18 magistrate on Saturday, June 27th. I did not appear that day
19 in court because my duty day was Monday, June 29th. Based on
20 my reading of the docket sheet, our speedy trial time was not
21 excluded for Mr. Langhorne based on the reading of the docket
22 sheet. I know the government's position about speedy trial in
23 general, but I just wanted to note, based on my reading of the
24 docket sheet, it was not excluded for Mr. Langhorne --

25 THE COURT: Okay.

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1 MR. KIRTON: -- by the magistrate on Saturday.

2 THE COURT: Okay. Well, I will be excluding time
3 today and the government's representation is that as far as its
4 concerned at the moment there is no time off the speedy trial
5 clock. If any defense counsel disagrees with that, please,
6 send me a letter explaining why that's not true. I had also
7 thought that the longest speedy trial clock applicable to any
8 defendant in a co-defendant case is the applicable speedy trial
9 clock for all of the defendants. But, if anyone, again,
10 disagrees with me, send me a letter indicating that there
11 should be a different speedy trial clock. But, as of now, the
12 government's representation with which I agree, is that there
13 is no time off the speedy trial clock. So, if anyone
14 disagrees, please send me a letter so I can get it resolved.
15 But, thank you for bringing that to my attention, Mr. Kirton.

16 So, I will exclude prospectively the time from today
17 until September 16th from Speedy Trial Act calculations. The
18 continuance is designed to assure effective assistance of
19 counsel, it is designed to allow the government to make
20 discovery and the defendants to review it. The Court finds
21 that the ends of justice served by ordering the continuance
22 outweigh the best interest of the defendants and public in
23 speedy trial. This order of exclusion is made pursuant to
24 18 U.S.C. Section 3161(h)(7)(A).

25 Mr. Cohen, you have a separate application?

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1 MR. COHEN: Yes. Before that, your Honor -- nobody
2 has to stay for the second application.

3 THE COURT: Right.

4 MR. COHEN: I spoke to the government about getting
5 the defendants or my client, obviously, and the rest of the
6 defendants who are incarcerated the discovery material, and I
7 was assured that they would be receiving the same two disks at
8 their place of incarceration so that would affect how quickly
9 we can confer with our clients about the discovery.

10 THE COURT: Ms. Waxman?

11 MS. WAXMAN: Your Honor, we will send the discovery to
12 both the MCC and the MDC this week.

13 THE COURT: Okay. Thank you.

14 MR. SOLOWAY: Your Honor, one quick thing. Robert
15 Soloway for Daniel Herring.

16 I wanted to make, at my client's firm request and at
17 this point early in the case, I wanted to point out that my
18 client is having some difficulty getting medical attention for
19 a painful condition on his left shoulder that he is having a
20 problem.

21 THE COURT: That's Mr. Herring?

22 MR. SOLOWAY: Yes.

23 THE COURT: Okay.

24 Ms. Waxman, will you inquire --

25 is he at the MCC or MDC?

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1 MR. SOLOWAY: MDC, your Honor.

2 THE COURT: MDC.

3 Ms. Waxman, will you inquire of the MDC about the
4 problem that Mr. Herring is having with his shoulder and have
5 the MDC assure that his shoulder is being treated and confirm
6 it in a letter to defense counsel, the government, and the
7 Court?

8 MS. WAXMAN: Yes, your Honor. We will do that.

9 THE COURT: Okay?

10 MR. SOLOWAY: Yes, Judge.

11 THE COURT: Anything else? So, I will deal with
12 Mr. Cohen and his client afterwards.

13 Thank you, all.

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